

United States District Court

Western District of Texas

Pecos Division

United States  
v.  
Thomas Arthur

No. P-19-CR-774-DC

---

Defendant's Requested Jury Instructions

---

Judge Counts:

Mr. Arthur has four requested modifications to the Court's draft jury charge of January 10, 2021.

**FIRST REQUEST**

On page 15, the Court's draft says:

An item may have serious value in one or more of these areas even if it portrays sexually oriented conduct.

Mr. Arthur asks that the charge instead say:

An item may have serious value in one or more of these areas even if it portrays sexually oriented conduct in a patently offensive manner and appeals predominantly to the prurient interest.

This serves to emphasize that each element of the offense is distinct—that proof that a work portrays sexually oriented conduct in a patently offensive manner is not proof that it is appeals predominantly to the prurient interest or lacks serious value; that proof that a work is patently offensive is not proof that the work portrays sexually oriented conduct in a patently offensive manner or lacks serious value.

**SECOND REQUEST**

Following that, the Court's draft says:

It is for you to say whether the material in this case has such value.

Mr. Arthur asks that this be changed to:

It is for you to say whether the material in this case lacks such value.

The operative legal question is not whether the works *have* serious value, but whether the Government has proven that the works *lack* serious value. Using the language of the legal issue may prevent confusion in the jury about what the question is, and most importantly about whose the burden is. If the question is “does the work have serious value,” the burden appears to be on the accused to answer it. If the question is “does the work lack serious value,” the burden is clearly on the Government, where it belongs.

### **THIRD REQUEST**

Page 18 of the Court’s draft refers to “stories and drawings.” The Government correctly notes that Mr. Arthur can be convicted for trafficking in stories *or* drawings.

The Government also argues, however, that

the jury could find that none of the charged drawings and writings are obscene, but some other writings from the Mr. Double site were obscene and thus find that Defendant still engaged in a business of transferring obscene material.

The effect of the Government making this argument to the jury will be discussed further in another motion, to be filed shortly. In order to

foreclose this argument, which would deprive Mr. Arthur of his rights to Due Process and to prepare and present his case, please use the words “stories or drawings described in Counts One through Six, Eight, and Nine” to make it clear to the jury that the obscene matter for which Mr. Arthur is being tried in Count Seven is that specifically described by the grand jury in the *Second Superseding Indictment*:

For you to find the defendant guilty of Count Seven, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

*First:* That the defendant was engaged in the business of selling, transferring, receiving, or possessing stories or drawings described in Counts One through Six, Eight, and Nine;

*Second:* That the defendant knowingly sold or transferred stories and drawings, or knowingly received or possessed stories or drawings described in Counts One through Six, Eight, and Nine with the intent to distribute them;


*Third:* That stories or drawings described in Counts One through Six, Eight, and Nine are obscene; and

*Fourth:* That stories or drawings described in Counts One through Six, Eight, and Nine have been shipped or transported in interstate or foreign commerce.

#### **FOURTH REQUEST**

Finally, if Mrs. Arthur testifies, an accomplice-witness instruction will be appropriate. By the Government's admission, she is a party to Mr. Arthur's alleged offenses.

Respectfully Submitted,



**Mark Bennett**

Attorney in Charge

TBN 00792970

**Bennett & Bennett**

917 Franklin Street, Fourth Floor

Houston, Texas 77002

713.224.1747

mb@ivi3.com

**Lane A. Haygood**

Texas State Bar Number:

24066670

**Haygood Law Firm**

522 N. Grant Ave.

Odessa, Texas 79761

Telephone: 432. 337.8514

Fax: 432.225.1062

lane@haygoodlawfirm.com

Attorneys for the Defendant,  
Thomas Alan Arthur

**CERTIFICATE OF SERVICE**

A copy of this document will be delivered to the attorneys for the Government by the efile system when it is filed with this Court.



---

Mark Bennett